



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of an Order to the Wolfhead  
Sportsman's Club to Remove Two Signs Visible  
from USH 8 and Located Near the Intersection of  
USH 8 and CTH "S" in Forest County, Wisconsin

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Case No. TR-99-0027

**FINAL DECISION**

By letter dated June 22, 1998, the Department of Transportation notified the Wolfhead Sportsman's Club, Inc., that two signs it owned in the Town of Crandon, Forest County north of United States Highway 8 and east of County Trunk Highway "S" had been erected without permits and were; therefore, illegal and must be removed. By letter dated July 8, 1999, Wolfhead Sportsman's Club, Inc., requested a hearing to review the removal order. On October 5, 1999, the Department of Transportation referred the request for hearing to the Division of Hearings and Appeals.

Pursuant to due notice, a hearing was held in Crandon, Wisconsin on February 29, 2000, before Mark J. Kaiser, Administrative Law Judge. The parties filed written argument after the hearing, the last submittal was received on March 30, 2000.

In accordance with secs. 227.47 and 227.53(1)(c), Stats, the PARTIES to this proceeding are certified as follows:

Wolfhead Sportsman's Club, Inc., by

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Wisconsin Department of Transportation, by

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The Administrative Law Judge issued a proposed decision on May 26, 2000. On June 9, 2000, the Wolfhead Sportsman's Club, Inc., filed objections to the Proposed Decision. The Wolfhead Sportsman's Club, Inc., objects to the finding that it owned land on either side of CTH "S". This finding was based on an erroneous reading of the plat map and has been amended to reflect that the Wolfhead Sportsman's Club, Inc., only owned land east of CTH "S."

In its objections, the Wolfhead Sportsman's Club, Inc., also renews its arguments that the sign removal order was not initially sent to the current property owner, the Crandon International Off-Road Racing Association, Inc., and that a billboard with a tarp covering the message does not constitute a sign within the meaning of sec. 84.30, Stats. Both these arguments are adequately addressed in the Proposed Decision and for the reasons stated in the Proposed Decision, the Wolfhead Sportsman's Club, Inc., arguments are not persuasive. Additionally, with respect to whether the Crandon International Off-Road Racing Association, Inc., received adequate notice of the removal order, it should be noted that on page four of the objections, the Wolfhead Sportsman's Club, Inc., states that the Crandon International Off-Road Racing Association, Inc., has objected to the proceedings.

No communication from the Crandon International Off-Road Racing Association, Inc., has ever been filed with the Division of Hearings and Appeals. The only objection to the letters sent to the Crandon International Off-Road Racing Association, Inc., after the hearing in this matter were received from Mr. Kennedy, the attorney for the Wolfhead Sportsman's Club, Inc. If Mr. Kennedy is saying that he filed this objection on behalf of the Crandon International Off-Road Racing Association, Inc., this further supports the finding that substantial overlap exists between the Wolfhead Sportsman's Club, Inc., and the Crandon International Off-Road Racing Association, Inc., and that notice directed to the Wolfhead Sportsman's Club, Inc., provided adequate notice to the Crandon International Off-Road Racing Association, Inc., as well.

Finally, the Wolfhead Sportsman's Club, Inc., objects to the Conclusion of Law that the subject signs are off premise signs. The evidence in the record supports this conclusion; however, it makes little difference whether the subject signs are considered off premise or on property signs. The basis for the removal order is simply that the signs were erected without permits. The record contains no evidence, nor does the Wolfhead Sportsman's Club, Inc., allege that on property permits have been issued for the locations of the subject signs. Other than amending Finding of Fact number one to reflect that the Wolfhead Sportsman's Club, Inc., did not own any property on the west side of CTH "S", the Proposed Decision issued is hereby adopted as the Final Decision in this matter.

### Findings of Fact

The Administrator finds:

1. The Wolfhead Sportsman's Club, Inc. (WSC), is a nonprofit, nonstock corporation with its principal office located in Crandon, Wisconsin. In 1984, the WSC purchased real property located in sections 24, 25 and 26 in the Town of Crandon, Forest County, Wisconsin,

from Louis Plummer. The land is located north of United States Highway 8 (USH 8) and east of County Trunk Highway "S" (CTH "S").

2. The WSC uses the property to conduct off road motor vehicle races. Sometime prior to June of 1998, the WSC erected two outdoor advertising signs on the property. At the time the Wisconsin Department of Transportation (Department) first became aware of the signs, one sign advertised Chevrolet and the other sign advertised Nicolet Minerals Company. The signs were erected in the northeast quadrant of the intersection of USH 8 and CTH "S." The signs were erected within 660 feet of the nearest edge of the right-of-way of USH 8 and near the right-of-way of CTH "S."

3. USH 8 is a federal-aid primary highway. Accordingly, a state permit is required to erect and maintain the subject signs. No permit was applied for or issued for either sign. By letter dated June 22, 1998, the Department advised the WSC that the subject signs had been erected in violation of sec. 84.30, Stats., and gave the WSC sixty days to remove the signs or request a hearing.

4. By letter dated July 9, 1998, the Department confirmed the discussions at a June 25, 1998, meeting and reiterated that the subject signs were erected and maintained in violation of sec. 84.30, Stats. In this letter the Department further advised the WSC that no permits could be issued for these signs as off premise signs at their current locations. The Department suggested several options for the signs including nearby sites at which the signs could be permitted.

5. At a meeting on August 20, 1998, the WSC proposed to screen the signs so that they would not be visible from USH 8. If the signs were not visible from USH 8, they could be maintained without a permit. The Department confirmed the discussion from this meeting by letter dated August 20, 1998. In the August 20, 1998, letter the Department also extended the sixty day deadline established in the June 22, 1998, letter by thirty days. By letter dated October 9, 1998, the Department granted an additional extension of the deadline to October 31, 1998.

6. By applications dated October 27, 1998, the WSC applied for two off premise outdoor advertising sign permits. The sites of the proposed signs were on the north side of USH 8, one sign 2100 feet east of the centerline of CTH "S" and the other sign 849 feet east of the centerline of CTH "S." The Department issued both permits on November 13, 1998. (Exs. 12 and 13) It was the understanding of the Department that the WSC intended to relocate the subject signs to the permitted locations.

7. The subject signs were not relocated to the permitted location along USH 8 east of CTH "S," but remained at their existing locations on the east side of CTH "S." The majority of the time the advertising content on the signs is covered by tarps. However, on June 25, 1999, Jane Nelson, the Department's District Permit Specialist, observed that the signs were uncovered. The sign advertising Chevrolet remained unchanged from June of 1998. The other sign now advertised Budweiser beer. By letter dated June 28, 1999, Ms. Nelson advised the WSC that she observed advertising on the signs contrary to her earlier admonitions and ordered the signs removed by July 6, 1999. (Ex. 16)

By letter dated July 8, 1999, Attorney Kennedy, on behalf of the WSC, requested a hearing to review the Department's removal order and to review the Department's refusal "to grant a permit for the subject billboards." (At the hearing, no evidence was presented that the WSC or any other entity applied to the Department for permits for the subject signs at their current locations. Presumably the WSC waives this basis for its hearing request.)

8. On February 1, 1996, the Crandon International Off-Road Raceway Association, Inc. (CIORA) was incorporated. CIORA was formed as a non-profit corporation for the purpose of organizing and undertaking off-road racing, recreational, charitable and educational events. On July 19, 1996, the WSC transferred the property on which it conducted off-road races and on which the subject signs are located to CIORA by quit claim deed in exchange for "one dollar and other good and valuable consideration."

9. All communications from the Department regarding the subject signs have been directed to the WSC. No separate notice was sent to the current property owner, CIORA. However, although the WSC and CIORA are distinct corporations, they are closely related. The WSC and CIORA have the same mailing address, P. O. Box 101, Crandon. Clifford M. Flannery, the president of the WSC in July, 1996, and Earl T. Brownell, the director of the WSC in July, 1996 (Ex. 5), are also identified as president and director respectively of CIORA. (Ex. 6) Earl Brownell signed the applications on behalf of the permit applicant, WSC, for permits to erect signs on CIORA's property. (Exhs. 12 and 13) And, according to certified copies of annual reports for the WSC and CIORA that the Department obtained from the Department of Financial Institutions, Virginia Brownell is the registered agent for the WSC and was also the registered agent for CIORA until January of 1999.

### Discussion

It is undisputed that no permits have been applied for or issued for the subject signs. It is also undisputed that the subject signs are within 660 feet of the center line USH 8 and within the taper of the intersection of USH 8 and TH "S". Finally, although Tom Vollmar testified that the signs were intended to be viewed by persons in vehicles travelling on CTH "S," it is undisputed that the signs are angled toward USH 8 and are clearly visible from USH 8. The parties did discuss screening the subject signs from the view of motorists on USH 8. The Department indicated that if the signs were so screened, no permit pursuant to sec. 84.30, Stats., would be required for the signs. However, the WSC never placed any screening in front of the signs. Presumably, the WSC did not place the screening because it intended for the signs to be visible to motorists on USH 8, as well as on CTH "S."

The Department issued a removal order for the subject signs on June 22, 1998. After issuance of the removal order, the Department met several times with representatives of the WSC to assist them in exploring other options for the signs. Eventually the WSC applied for and received sign permits for two nearby locations along USH 8. However, the WSC never moved the signs to the permitted locations. When the Department became aware that the WSC was still using the subject signs, the Department sent one more letter to the WSC setting a new deadline

for it to remove the signs. Finally, more than a year after the removal order was initially issued, the WSC requested a hearing to review the removal order. The Department referred the request for hearing to the Division of Hearings and Appeals.

The WSC seeks to have the removal proceedings dismissed because no notice was sent to the property owner, CIORA. CIORA is now the owner of the land upon which the subject signs are located; however, the WSC apparently is still the owner of the actual sign structures. Although no notice was addressed specifically to CIORA prior to the hearing, the corporation clearly was aware of the proceedings. There is significant overlap between the officers and directors of the WSC and CIORA and the two corporations share the same post office box address. Also the June 9, 1999, letter, although addressed to the WSC, was signed for by a agent for CIORA. The certified mail receipt for this letter was submitted as an exhibit after the hearing (Exh. 24). The letter was signed for by Virginia Brownell. Ms. Brownell is the registered agent for the WSC and was also the registered agent for CIORA until January, 1999. Although the certified mail receipt was addressed to the WSC, someone, presumably either the U.S. Post Office or Ms. Brownell, wrote CIORA in the addressee's address box on the certified mail receipt. (This could not have been done by the Department because at the time the letter was sent, the Department was not aware that ownership of the property had been transferred from WSC to CIORA.)

Finally, after it was disclosed during the hearing that the property on which the subject signs are located had been transferred to CIORA, both the Department and the ALJ addressed letters to CIORA giving it an opportunity to participate in the hearing process. No such request was received from anyone on behalf of CIORA. By letter dated March 13, 2000, Attorney Kennedy, on behalf of WSC, responded to the letters directed to CIORA. Mr. Kennedy argued that the letters did not give CIORA the sixty days response time required pursuant to sec. 84.30(11), Stats.<sup>1</sup> Although the letters directed CIORA to respond by March 24, 2000, sixty days has now passed and there still has been no communication from CIORA.

In summary, the subject signs were erected without a permit pursuant to sec. 84.30, Stats. The Department also presented evidence that the subject signs at their present locations would not be eligible for a permit; however, this issue is beyond the scope of the hearing since no permit application was ever filed for these signs at their current locations. The sign owner, the WSC, raises as a procedural issue, the lack of separate notice to the current property owner, CIORA. It is clear that the WSC and CIORA are closely related. CIORA had actual notice of the Department's actions and of the hearing to review the Department's removal order. Earl Brownell, the person representing the WSC in the negotiations with Jane Nelson of the Department, is listed as one of the Directors of CIORA. Clifford Flannery, the president of CIORA, and Thomas Vollmar, a director of CIORA, both testified at the hearing on behalf of the WSC.

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<sup>1</sup> Sec. 84.30(11), Stats., prohibits the Department from removing any unlawful sign until sixty days after notice is provided to the sign owner and the property owner. Sec. 84.30, Stats., does not specify a deadline to request a hearing to review a sign removal order. Traditionally, the Department has given sign owners sixty days to remove an unlawful sign, bring the sign into conformance with the law, or request a hearing on the removal order. However, as discussed, in the instant case the Department accepted a request for hearing received more than one year after the removal order was issued.

Although the Department could have checked the records of the Forest County Register of Deeds and discovered that the property had been transferred to CIORA, the representatives of the WSC met repeatedly with representatives of the Department and there is no indication that anyone from the WSC ever advised the Department that the property on which the signs are located is now owned by CIORA. It was inherently reasonable for the Department to direct its removal order to the WSC since no one from WSC ever informed the Department during any of these meetings that it no longer was the owner of the property on which the sign was located. Nevertheless, CIORA has now received a removal order addressed specifically to it. More than sixty days has passed since the removal order was issued to CIORA and CIORA has not asked to participate in the instant proceedings or requested a separate hearing to review the removal order directed to it.

A final issue which the WSC raised in its motion filed at the outset of the hearing in this matter, is that the subject structures are not signs within the meaning of sec. 84.30(2)(j), Stats., because the messages on the signs are covered by tarps most of the time. Section 84.30(2)(j), Stats., defines a sign as "any outdoor advertising sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard, or other thing, which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of any portion of an interstate highway or primary highway." The WSC's contention that the signs were covered by tarps the majority of the time is undisputed. However, the structures are clearly designed and intended to be used for advertising for some periods of time. Accordingly, the structures do fit within the definition of a sign and are subject to the regulation of sec. 84.30, Stats.

### Conclusions of Law

The Administrator concludes:

1. The subject structures constitute signs within the definition of "sign" at sec. 84.30(2)(j), Stats.
2. The subject signs cannot be classified as "on-property signs" pursuant to sec. 84.30(3)(c), Stats., because the message content on the subject signs does not advertise activities conducted on the property on which the signs are located. Sec Trans 201.19(2), Wis. Adm. Code.
3. The phrase "adjacent area" for purposes of sec. 84.30, Stats., is defined at sec. 84.30(2)(a), Stats. The subject signs are located within the adjacent area of USH 8, a federal – aid primary highway. Pursuant to sec. Sec. 84.30(3), Stats., an off premise outdoor advertising sign can not be erected or maintained in the adjacent area of a federal-aid primary highway without a sign permit.
4. The subject signs were erected without a permit. Therefore, they can not lawfully be maintained.

5. The removal order dated June 22, 1998, issued by the Department was addressed to and received by the WSC, the owner of the subject signs, and provided actual notice to officers and directors of CIORA, the property owner. The removal order satisfied the requirements of sec. 84.30(11), Stats.

6. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Wis. Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The removal order issued by the Wisconsin Department of Transportation as set forth in its letter dated June 22, 1998, is affirmed.

Dated at Madison, Wisconsin on June 21, 2000.

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By \_\_\_\_\_  
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